IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2730 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
MACHHUBHAI P PATEL & 1 - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,1.2.1
FRESH NOTICE REQD(N) for Respondent(s) : 1,
MR AJ SHASTRI for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 06/11/2006

ORAL JUDGMENT

1. The present petition is preferred by the State Government for challenging the legality and validity of order dated 24.05.1993 passed by the Urban Land Tribunal in Appeal No.31 of 1993, whereby the appeal was partly

allowed and the order dated 15.02.1988 of the Competent Authority, Surat for declaration of land admeasuring 8110 sq.mtrs. as excess land was set aside and the matter was ordered to be remanded back by the Urban Land Tribunal to the Competent Authority, Surat.

2. It appears that on 08.04.1997, the petition came to be admitted and status quo was ordered to be maintained. Thereafter, vide order dated 19.06.1997, the aforesaid order of status quo was ordered to be continued till final disposal of the petition.

3. Shri Maganbhai B. Patel, Competent Authority and Additional Collector, U.L.C. had initially filed affidavit dated 17.01.2000, wherein at paragraph No.3, it has been stated as under:-

> “3. I say and submit that looking to the proceedings the further progress as per the record, is that the notification u/s 10(1) of the Act has been issued on 29.01.1988 and which has been duly published on 10/3/88. And accordingly the land in question has been vested in the Government and no right title remains in the hands of the petitioner.”

4. Thereafter, the possession of the land in

question has not been taken over. Accordingly, the position on the date of coming into force of the Repeal Act that the possession of the land in question had not been taken over by the Government."

4. It appears that pending the petition, Civil Application No.7969 of 2004 was preferred by the original respondent No.1 for fixing the final hearing of the matter contending inter alia that the proceedings are abated. This Court in the said Civil Application on 01.10.2004 had passed the following order:-

"Considering the facts and circumstances of the case, the main SCA No.2730/97 is fixed for final hearing on 27.10.2004. The respondent authorities may verify the factual position in respect of the land in question as to whether the possession is taken over or not and, if yes, proof of the same. CA is disposed of accordingly."

5. It appears that thereafter, on 25.10.2004, Shri J.B. Vora, Competent Authority and Additional Collector (Co-ordination), U.L.C., Surat has filed another affidavit, in which, after paragraph 2, it has been stated as under:-

> “Accordingly the position on the date of coming into force of Repeal Act that the possession of the land in question had not been taken over by the Government.”

6. Under the above circumstances, Mr.Desai, learned A.G.P. states that as per the declaration made in both the aforesaid affidavits, the possession of the land in question was not taken over by the Government on the date when Repeal Act came into force.

7. Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Clause A) provides for saving of the action in respect to the land which has vested under Section 10(3) of the Act and the possession of which has been taken over by the State Government. It may be observed that while examination of the constitutional validity of the aforesaid Repeal Act in case of Rameshchandra Shamjibhai Raniga V/s. State of Gujarat and others reported in 2004(4) GLR 2777, it has been observed by the Division Bench at paragraph 36 as under:-

> “36. The Repealing Act, by use of language in Sec.3(1) that the Principal Act shall not affect such land vested and taken possession of, with the aid of Sec.6 of the General Clauses Act, clearly

intends that such vested lands in possession of State has to be used for the purposes mentioned in Sec.23 of the Act of 1976."

It was further observed at paragraph 37 as under:

"37. The alternative submission made on behalf of the State that the land acquired and taken possession of by the State would be an accretion to the public property to be used by the State like any other property with it for public good also appears to be acceptable."

It was further observed at paragraph 38 inter alia as under:-

"38. We also consider it necessary to observe that it would have been possible for the Legislature to have adopted any other alternative mode of classification, to retain the land vested, possessed of, allotted and already put to use and to release after repeal to the land owners, the lands deemed to be acquired and vested, but of which possession is or is not taken from the land owners. That such a classification would have been more wise and just would not be a ground to hold the present provision to be discriminatory. If the classification *inter se* between the land vested and taken possession of and vested, but not taken possession of, is found to be reasonable and not unfair, having nexus with the main purpose and object of the Repealing Act, the wisdom of Legislature cannot be questioned as to why it released free and returned to the land owners the

lands deemed to be acquired and vested, but of which possession was not taken."

8. Therefore, as both the conditions are applicable for saving of the action under the Urban Land (Ceiling and Regulation) Act 1976 namely of vesting of the land under Section 10(3) of the Act and of taking over of the possession by the Government on the date when the Repeal Act came into force and as the aspect of possession having been not taken over by the Government of the land in question is not in dispute, the proceedings under the Act of 1976 shall stand abated.

9. Under the above circumstances, the present petition is disposed of in view of the abatement of the proceedings as per Urban Land (Ceiling and Regulation) Repeal Act, 1999. Rule is discharged. Interim relief, if any, shall stand vacated. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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